

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

GEORGE BROWN and

CIVIL ACTION NO. 12-1180

DANIEL J. MACK

SECTION "A"

JUDGE JAY C. ZAINEY

CITY OF NEW ORLEANS and

MAGISTRATE DIVISION "4"

NEW ORLEANS POLICE

MAGISTRATE JUDGE KAREN WELLS ROBY

DEPARTMENT

versus

NOTICE OF FAIR LABOR STANDARDS ACT OVERTIME ACTION

TO: All current and former employees of the City of New Orleans from May 10, 2009 through the present date who are/were employed as members of the New Orleans Police Department and received the educational incentive pay and/or any of the special rates of pay for Field Training Officers, Bomb Squad, Marine, K-9, Motorcycle, Tactical and/or Mounted Units

RE: Fair Labor Standards Act Collective Lawsuit Filed Against the City of New Orleans **Seeking Unpaid Overtime Compensation**

INTRODUCTION. 1.

The purpose of this Notice is to inform you of the existence of a proposed collective action lawsuit for unpaid overtime in which you are potentially "similarly situated" to the Named Plaintiffs; to advise you of how your rights may be affected by this lawsuit; to instruct you on the procedure for participating in this lawsuit, should you decide that it is appropriate and should you choose to do so; and to participate in the settlement.

2. DESCRIPTION OF THE LAWSUIT.

On May 10, 2012 George Brown and Daniel Mack filed a lawsuit on behalf of themselves and similarly situated past and current employees of the New Orleans Police Department (hereinafter referred to as the "NOPD") of the City of New Orleans (hereinafter referred to as the "City") who received an education pay incentive (the "Education Pay Incentive"). On August 16, 2012 the Plaintiffs filed an Amended Complaint adding claims regarding officers of the NOPD who received any of the special rates of pay for Field Training Officers, Bomb Squad, Marine Unit, K-9 Unit, Motorcycle, Tactical Unit and/or Mounted Unit during the relevant time period (the Education Pay Incentive and all rates collectively, the "Special Rates of Pay"). This Overtime Action alleges that the Plaintiffs, and others similarly situated, are owed unpaid overtime under the Fair Labor Standards Act ("FLSA" or the "Act") attributable to the Special Rates of Pay.

This Overtime Action is currently in the early pre-trial stages. The City and Named

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Plaintiffs have reached a settlement agreement whereby Named Plaintiffs and all similarly situated NOPD officers who "opt in" to the lawsuit would be provided with unpaid overtime attributable to the Special Rates of Pay from January 1, 2012 through December 31, 2013. The City continues to deny liability with respect to the Overtime Action, and the City further maintains that it acted non-willfully and in good faith with respect to the allegations contained in the Overtime Action.

3. COMPOSITION OF THE COLLECTIVE ACTION GROUP.

In this Overtime Action, the Named Plaintiffs are suing on behalf of themselves and on behalf of other NOPD officers with whom they are similarly situated. More specifically, the collective action group includes all current and former employees of the City who are/were employed as members of the New Orleans Police Department on or after May 10, 2009 and received any Special Rate of Pay.

4. YOUR RIGHT TO PARTICIPATE IN THIS SUIT.

If you fit the definition above, you may join the Overtime Action (that is, you may "opt in") by mailing, faxing, or e-mailing the "Consent to Become Party Plaintiff" form by May 15, 2014 to the following address:

NOPD Overtime Action

GUSTE, BARNETT, SCHLESINGER, HENDERSON & ALPAUGH, L.L.P.

639 Loyola Avenue, Suite 2500

New Orleans, Louisiana 70113

Telephone:

(504) 529-4141

Facsimile:

(504) 561-0326

E-Mail:

nopdovertime@gustebarnett.com

If you fail to return the "Consent to Become Party Plaintiff" form on or before May 15, 2014, you may not be able to participate in the Overtime Action. If you file a consent form, your right to participate in the Overtime Action may depend upon a later decision by the District Court that you and the Named Plaintiffs are actually "similarly situated" in accordance with federal law, that no statute of limitations expired against you, and/or that some other legal or factual reason does not bar your claim.

5. EFFECTS OF JOINING THIS SUIT.

If you choose to join in this suit, you will receive unpaid overtime, if any, related to the Special Rates of Pay from January 1, 2012 through December 31, 2013, calculated in accordance with the formal settlement agreement between the City and Named Plaintiffs. This amount will necessarily depend on the amount of overtime you worked for this period as well as your hourly rate of pay.

The attorneys for the Named Plaintiffs are being paid by Crescent City Lodge No. 2, Fraternal Order of Police, Inc. ("FOP"). As part of the settlement and in accordance with the Fair Labor Standards Act, the City will provide Named Plaintiffs' counsel with a specified

amount of attorneys' fees from which the FOP will be reimbursed the attorneys' fees it has paid to date. None of the fees will impact in any way the overtime compensation you receive as part of the settlement.

By joining this lawsuit, you designate the collective action group representatives (i.e., the Named Plaintiffs) as your agents to make decisions on your behalf concerning the litigation and the settlement, the method and manner of conducting this litigation and the settlement, and all other matters pertaining to the Overtime Action. By joining this suit, you understand that Named Plaintiffs have entered into a binding "Settlement Agreement and Release" with the City, signed by the parties December 30, 2013 (attached hereto as Exhibit "A" and incorporated herein by reference), pursuant to which the Settlement Sum (as defined in the Settlement Agreement and Release) shall constitute the sole financial recovery by Class Members (as defined in the Settlement Agreement and Release).

NO LEGAL EFFECT IN NOT JOINING THIS SUIT. 6.

If you choose not to join the Overtime Action, you will not be affected by the settlement. However, the passage of time may result in part or all of your potential FLSA claim being barred by the applicable statute of limitations period. If you wish to participate in the Overtime Action, it is important that you sign, date, and mail, fax or e-mail the attached "Consent to Become Party Plaintiff' form to Named Plaintiffs' counsel as soon as possible, but in any event, no later than the May 15, 2014 deadline.

7. NO RETALIATION PERMITTED.

FEDERAL LAW PROHIBITS THE CITY OR THE NOPD FROM DISCHARGING YOU OR IN ANY OTHER MANNER DISCRIMINATING AGAINST YOU BECAUSE YOU HAVE EXERCISED YOUR RIGHTS UNDER THE FAIR LABOR STANDARDS ACT.

8. YOUR LEGAL REPRESENTATION IF YOU JOIN.

If you choose to join this suit, your interests will be represented by the Named Plaintiffs through their attorneys, as counsel for the collective action group. Counsel for the Named Plaintiffs are:

C. Theodore Alpaugh, III GUSTE, BARNETT, SCHLESINGER, HENDERSON & ALPAUGH, L.L.P. 639 Loyola Avenue, Suite 2500 New Orleans, Louisiana 70113 Telephone: (504) 529-4141 (504) 561-0326 Telecopier:

cta@gustebarnett.com

Claude A. Schlesinger GUSTE, BARNETT, SCHLESINGER, HENDERSON & ALPAUGH, L.L.P. 639 Loyola Avenue, Suite 2500 New Orleans, Louisiana 70113 Telephone: (504) 529-4141 Telecopier: (504) 561-0326

Email: cas@gustebarnett.com

Email:

9. COUNSEL FOR THE CITY.

The attorneys for the City of New Orleans are:

Kim M. Boyle

PHELPS DUNBAR LLP

Canal Place

365 Canal Street, Suite 2000

New Orleans, Louisiana 70130-6534

Telephone:

(504) 566-1311

Telecopier:

(504) 568-9130

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365 Canal Street, Suite 2000

New Orleans, Louisiana 70130-6534

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(504) 568-9130

Alex H. Glaser PHELPS DUNBAR LLP Canal Place 365 Canal Street, Suite 2000 New Orleans, Louisiana 70130-6534

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(504) 566-1311

Telecopier:

(504) 568-9130

10. **FURTHER INFORMATION.**

Further information about this Notice, the deadline for filing a "Consent to Become Party Plaintiff" form, or questions concerning this lawsuit may be obtained by writing or telephoning Plaintiffs' counsel at any of the numbers and addresses listed in Section 8 above.

THIS NOTICE AND ITS CONTENTS HAVE BEEN AUTHORIZED BY THE UNITED STATES DISTRICT COURT, HONORABLE JAY ZAINEY, UNITED STATES DISTRICT JUDGE. THE COURT HAS TAKEN NO POSITION IN THIS CASE REGARDING THE MERITS OF THE NAMED PLAINTIFFS' CLAIMS OR **DEFENDANTS' DEFENSES.**

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (the "Agreement") is entered into by and between George Brown and Daniel J. Mack ("Named Plaintiffs"), on behalf of themselves and those similarly situated that opt-in to the Overtime Litigation (as defined below) ("Opt-In Members," collectively with Named Plaintiffs, "Class Members") and the City of New Orleans ("the City").

BACKGROUND

On May 10, 2012, Named Plaintiffs filed a complaint (which was subsequently amended on January 3, 2013 and March 20, 2013) on behalf of themselves and similarly situated past and current employees of the New Orleans Police Department, styled as George Brown and Daniel J. Mack v. City of New Orleans and New Orleans Police Department, Case No. 12-1180, United States District Court, Eastern District of Louisiana (the "Overtime Litigation"), in which Named Plaintiffs allege that the City failed to pay overtime compensation in violation of the federal Fair Labor Standards Act (the "FLSA"). Specifically, Named Plaintiffs alleged that the City failed to include an education pay incentive and/other special rates of pay for bomb squad, canine unit, marine unit, mounted patrol unit, special operations division/tactical unit, field training officer and motorcycle operations unit in the "regular rate" for the purpose of calculating overtime compensation. The City denies any and all liability to Class Members and denies committing any of the wrongful or illegal acts alleged in the Overtime Litigation.

The parties now desire to enter into this Agreement to provide, among other things, for a reasonable settlement and full discharge of any and all disputes brought or which could have been brought by Class Members.

SUBSTANTIVE PROVISIONS

In exchange for the mutual promises contained herein and for other good and valuable consideration, the receipt of which is expressly acknowledged, the parties agree as follows:

1. The City's Payments to Class Members.

- A. The City agrees to pay Named Plaintiffs the amount of unpaid overtime attributable to the "special rates of pay" mentioned above from May 10, 2009 through December 31, 2013 and further agrees to pay Opt-In Members unpaid overtime attributable to the "special rates of pay" mentioned above from January 1, 2012 through December 31, 2013 (the "Settlement Sum"), in full compromise and settlement of any and all claims Class Members had, have, or may have against the City. The parties agree that the Settlement Sum will be paid to Named Plaintiffs in one lump sum and to Opt-In Members in substantially equal installment payments over a period of twenty-four (24) months. The parties agree that the City will remit the Settlement Sum through the City's automated payroll system or through such other mutually agreed-upon means of payment.
- B. Commencing as of January 1, 2014, the City warrants and represents that Class Members (and any similarly-situated NOPD officer who does not opt-in to the Overtime

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Litigation) will receive overtime compensation calculated in accordance with the Section 1(A) above.

C. The parties agree that the Settlement Sum represents payments attributable to unpaid wages, or back pay, which represents full settlement of any claims Class Members may have against the City for unpaid overtime wages according to the terms and conditions set forth in this Agreement. The parties acknowledge and agree that the Settlement Sum is paid as a result of a disputed claim for unpaid overtime wages incurred by Class Members and, therefore, the City will issue an IRS Form W-2 to each affected Class Member in connection with the payment of the Settlement Sum. Further, the City will withhold from the Settlement Sum all federal, state, and local taxes or other applicable withholdings.

Class Members agree that the foregoing amount represents adequate consideration for the waivers and releases contained in this Agreement.

2. Attorneys' Fees and Costs. The City shall pay to Class Members' counsel a gross sum of \$25,000 in full settlement of any claims that Class Members have, had or may have as to the recovery of attorneys' fees and costs relating to the Overtime Litigation. This sum will be paid by a check made payable to "Guste, Barnett, Schlesinger, Henderson & Alpaugh, L.L.P." The parties acknowledge and agree that this amount represents compensation for disputed claims for attorneys' fees and costs incurred by Class Members and, therefore, as to this portion of the Settlement Sum, the City will issue an IRS Form 1099 to Guste, Barnett, Schlesinger, Henderson, & Alpaugh, LLP and will not make any deductions or withholdings.

3. Class Members' Obligations to the City.

- A. Notwithstanding that the Settlement Sum is paid with respect to alleged unpaid wages and attorneys' fees and costs, Class Members agree to release the City from any and all other claims for damages Class Members may assert or may have asserted in the Overtime Litigation. For the avoidance of doubt, Class Members do not waive any claims relating to the accrual of benefits under the Municipal Police Employees' Retirement System (commonly known as "MPERS"), and nothing contained herein shall affect Class Members' accrual of benefits under MPERS. Notwithstanding that the Class Members do not waive any claims relating to the accrual of benefits under MPERS, the City does not concede that the Class Members have any claims relating to the accrual of benefits under MPERS and expressly reserves and does not waive any and all rights, defenses, and arguments to challenge any attempt by Class Members to seek such claims in any proceeding.
- B. Class Members understand that the Settlement Sum shall constitute the sole financial obligation of the City to Class Members under the terms of this Agreement.
- C. Class Members agree to jointly file with the City a motion requesting that the Court approve this Agreement and to dismiss the claims in the Overtime Litigation with prejudice within one-hundred twenty (120) business days after this Agreement becomes effective.
- D. Class Members represent and warrant to the City that, other than the Overtime Litigation, Class Members have no other pending charges, complaints, claims, or actions against

the City, or any existing or former employee, agent, or representative of the City, that relates to the Overtime Litigation before signing this Agreement. In addition, Class Members represent that no claims or actions related to the Overtime Litigation have been assigned to any person or entity by any Class Member.

- 4. Release by Class Members. Class Members (as well as Class Members' heirs, personal representatives, assigns, successors, agents, and attorneys) hereby release and forever discharge the City (as well as its affiliated organizations, benefit plans, benefit plan administrators, benefit plan fiduciaries, employees, agents, attorneys, and representatives) from any and all claims Class Members have, had, or hereafter may have based upon the allegations in the Overtime Litigation.
- 5. <u>Non-admission of Liability</u>. The parties acknowledge and agree that the settlement of Class Members' claims: (i) does not constitute any admission of liability by the City; (ii) does not constitute an admission by the City of the validity of any of Class Members' legal or factual contentions; and (iii) is solely for the purpose of avoiding the expense and inconvenience of further proceedings between the parties.
- 6. Entire Agreement. This Agreement represents the sole and entire agreement between the parties and supersedes any and all prior agreements, negotiations, or discussions between the parties and/or their respective counsel with respect to the subject matter covered in this Agreement. The parties further agree that this Agreement may not be modified orally and that any modification of this Agreement must be in writing and signed by all parties.
- 7. Opportunity to Review/Irrevocability. The parties acknowledge and agree that Named Plaintiffs were provided an adequate period to review this Agreement before signing it. After Named Plaintiffs (on behalf of all Opt-In Members) sign this Agreement, it shall become irrevocable. Named Plaintiffs agree that the City encouraged them to seek adequate legal counsel regarding the terms of this Agreement prior to signing it.
- 8. <u>Informed, Voluntary Signature</u>. In entering into this Agreement, Named Plaintiffs represent that, before executing this Agreement, Named Plaintiffs have completely read all the terms herein and fully understand and voluntarily accept the terms after having the opportunity to consult adequate legal counsel. Named Plaintiffs further acknowledge and agree that the subsequent discovery of any facts by Named Plaintiffs, whether or not existing on the date of this Agreement and no matter how material, shall have no effect on the validity of the Agreement.
- 9. Attorneys' Fees and Costs. Other than as set forth in Section 2 above, the parties agree to bear their own attorneys' fees and costs in connection with the Overtime Litigation and the preparation of this Agreement. However, in the event that either party institutes an action to enforce any provision contained in this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs from the other party, including any fees and costs on any appeal(s).
- 10. <u>Representation of Opt-In Members</u>. Named Plaintiffs acknowledge that they have been designated to act on the behalf of and in the best interests of Opt-In Members and that they have done so. By signing this Agreement, Named Plaintiffs intend to bind all Opt-In

Members to the terms of this Agreement. Notice to Opt-In Members shall be sent substantially in the form of the attached "Exhibit A" to this Agreement.

11. Miscellaneous.

- A. The parties agree that this Agreement shall be interpreted and enforced in accordance with Louisiana law.
- B. If one or more paragraph(s) of this Agreement are ruled invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the Agreement, which shall remain in full force and effect.
- C. This settlement is contingent upon the Court's approval of this Agreement and the dismissal with prejudice of the Overtime Litigation. The parties acknowledge that the Court will retain jurisdiction to enforce the settlement agreement among the parties. If, for whatever reason, the Court does not approve this Agreement and does not dismiss, with prejudice, the Overtime Litigation, then all parties are discharged of any and all obligations they have under the terms of this Agreement.
- D. This Agreement may be executed in counterparts, and a faxed signature shall be operative.
- E. Any and all notices, demands, or other communications required or permitted to be given to either party in connection with this Agreement shall be in writing and delivered personally, by hand, by fax and/or email, or mailed by certified mail, return receipt requested, to the address of such party as set forth below and, if mailed by certified mail, shall be deemed to have been received by such party on the earlier of (a) the third business day after such mailing, or (b) the date of actual receipt by the addressee if a return receipt is obtained by the party making such mailing; if personally delivered, shall be deemed to have been received by such party on the date of delivery.

Notice to the City shall be sent to their attorney of record in the matter:

Kim M. Boyle Phelps Dunbar LLP 365 Canal Street, Suite 2000 New Orleans, LA 70130-6534

Notice to Class Members shall be sent to:

C. Theodore Alpaugh, III Guste, Barnett, Schlesinger, Henderson & Alpaugh, LLP 639 Loyola Avenue, Suite 2500 New Orleans, LA 70113

George Brown

The City of New Orleans

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Sign Name:	By: AM M. Boyle
Print Name:	Its: Church for Myst N.O
Date:	Date: <u>Desembly 30, 20/3</u>
	,
Daniel J. Mack	Counsel for Plaintiffs George Brown and Daniel J. Mack
Sign Name:	Sign Name:
Print Name:	Print Name: Claude A. Schlesinger
Date:	Note: The 30, 20/3